

ESTTA Tracking number: **ESTTA158470**

Filing date: **08/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176901
Party	Plaintiff Bodyonics, Ltd.
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Attachments	PoppersMotionStrikeNtcReliance.pdf (2 pages)(331494 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Bodyonics, Ltd.)	Opposition No. 91176901
)	
Opposer,)	
)	
v.)	MOTION TO STRIKE APPLICANT'S
)	NOTICE OF RELIANCE IN OPPOSITION
Jeffrey Lee Kaplan and)	TO OPPOSER'S MOTION FOR SUMMARY
Ilie Ionescu,)	<u>JUDGMENT</u>
)	
Applicants)	
)	

Applicant has filed a Notice of Reliance citing TBMP 704.03(b)(12)(B). No such section of the TBMP exists. Therefore, the citation is meaningless and there is no basis for the Notice of Reliance.

Once again the Board and Opposer are burdened by the lack of knowledge of the Applicant regarding procedural and substantive law. TBMP 704.08 makes clear that internet publications cannot be the subject of a Notice of Reliance because they are not self-authenticating:

The element of self-authentication cannot be presumed to be capable of being satisfied by information obtained and printed from the Internet. Internet postings are transitory in nature as they may be modified or deleted at any time without notice and thus are not "subject to the safeguard that the party against whom the evidence is offered is readily able to corroborate or refute the authenticity of what is proffered.

Here that is all the more true where Opposer has submitted evidence that two of the products referenced in the defective Notice of Reliance are no longer actually being sold. The marketers of VEGAS POPPERS and PLASMAVOL POWER POPPERS have both assured Opposer that further distribution of these products has ceased. This evidence is now before the Board. In addition, the

documents upon which Applicant seeks to rely, with the exception of information from Opposer's website, are woefully out of date (from April and early May, 2007).

The Notice of Reliance is clearly defective and should be stricken.

Dated: August 22, 2007.



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I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Ilie Ionescu and Jeffrey Kaplan at P.O.B. 11106, Ft. Lauderdale, FL 33339 on August 22, 2007.


Jay H. Geller